IN THE HIGH COURT OF JUDICATURE OF
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MRS. JUSTICE T.MEENA KUMARI
AND
THE HON'BLE MR. JUSTICE G.CHANDRAIAH

WRIT PETITION NO. 17861 OF 2007
AND
WP MP NO. 23265 OF 2007

Dated : September 3, 2007

Between:

P.C. Narasimhulu

Petitioner

AND

The Chief Executive Officer,
Zilla Parishad, Kadapa,
Kadapa District and others

Respondents

THE HON'BLE MRS. JUSTICE T.MEENA KUMARI
AND
THE HON'BLE MR. JUSTICE G.CHANDRAIAH

WRIT PETITION NO. 17861 OF 2007

COMMON ORAL ORDER:

(per THE HON'BLE MRS. JUSTICE T.MEENA KUMARI)

Seeking a writ of certiorari to call for the records

relating to the order dated 17.04.2007 passed in O.A. No. 10745 of 2002 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad, and consequently to allow the same, the petitioner filed this writ petition.

The petitioner herein filed the above O.A. before the Tribunal assailing the proceedings Ref. No.A4/E5/1914/2001 dated 22.11.2002 by which the first respondent herein has removed the petitioner from employment from the post of Attender.

Few facts, that are necessary for disposal of this writ petition, are that pursuant to the notification issued by the first respondent, the District Employment Exchange, Kadapa, in October, 2001 sponsored the candidates for the post of Attenders, and since the name of the petitioner did not figure in the said list, for want of seniority, the petitioner filed OA No. 9876 of 2001 before the Tribunal, which was disposed of on 28.12.2001 by the Tribunal directing the first respondent to consider the candidature of the petitioner. As such the petitioner was permitted to undergo selection process. Subsequently, according to the petitioner, his testimonials were verified by the District Educational Officer, Kadapa and submitted a report vide Rc. No.6786/A10/2002 dated 24.9.2002 and informed the first erspondent that they are genuine and basing on the said report and in view of the fact that the petitioner belongs to Scheduled Caste, he was appointed vide

proceedings Rc. No.A4/E5/1914/2001 dated 30.9.2002 issued by the first respondent. Pursuant to the said order, the petitioner joined duty on 8.10.2002. While so, the petitioner received a notice dated 30.10.2002 issued by the first respondent calling for his explanation as to why he should not be removed from the post of Attender inasmuch as the 7th class marks furnished by him, were found to be bogus as per the report of the Mandal Parishad Educational Officer dated 24.10.2002.

Feeling aggrieved of the said show cause notice, the petitioner herein filed OA No. 10133 of 2002, proposing to remove the petitioner from employment. He also submitted a representation to the first respondent bring to his notice the fact of filing OA and prayed to extend time for submitting explanation to the said notice. But to his utter surprise, the first respondent issued the impugned proceedings removing him from service, pending the above OA No. 10133 of 2002. Consequently, the petitioner filed OA No. 10745 of 2002 assailing his removal from employment.

The Tribunal, having considered the contentions of the petitioner dismissed the O.A. holding that mere acquittal in criminal case CC No. 89 of 2003 by the Judicial Magistrate of First Class, Badvel, Kadapa District, registered against him for producing bogus marks memo of 7th class, cannot come to the rescue of the petitioner in

securing the employment. Hence, the writ petition.

Learned counsel for the petitioner contends that the alleged enquiry said to have been conducted by the Mandal Parishad Educational Officer and submission of report dated 24.10.2002 is politically motivated, unilateral and behind the back of the petitioner without putting him on notice and affording an opportunity to put forth his case and, therefore, it cannot be said that enquiry was impartial and properly conducted. It is further contended by the learned counsel that issuance of notice to the petitioner is all the more necessary, in view of the fact that before issuing proceedings Rc. No. A4/E5/1914/2001 dated 30.9.2002, appointing the petitioner, the District Educational Officer, Kadapa, has verified his testimonials and issued proceedings Rc. No. 6786/A-10/2002 dated 24.9.2002, informing the first respondent that the certificates produced by the petitioner are genuine. It is further contended that the first respondent in a post haste manner, issued the impugned proceedings without considering the representation of the petitioner to extend time for submission of explanation and during pendency of OA No. 10133 of 2002, which was filed assailing the show cause notice proposing to remove the petitioner from employment. It is also his contention that since the respondents were bent upon to remove the petitioner from service, they have neither considered his representation nor afforded an opportunity to put forth his case and,

therefore, the impugned order is vitiated by mala fides and violation of principles of natural justice.

Learned Government Pleader for Services – I vehemently tried to sustain the impugned order contending that the petitioner is guilty of producing bogus 7th class marks and involved himself in a criminal case and irrespective of his acquittal by the criminal court, the impugned proceedings are just.

We have gone through the notice, dated 30.10.2002, issued by the first respondent whereby the petitioner was directed to submit his explanation within seven days from the date of receipt of the said notice. The said notice proposes to impose penalty of removal. Evidently, the respondents have proposed the penalty even before receipt of explanation to be submitted by the petitioner. The petitioner also filed WP MP No. 23265 of 2007 seeking to amend the prayer in the writ petition with regard to quashing of the show cause notice dated 30.10.2002, which was incidentally not sought for, along with the consequential proceeding dated 22.11.2002 removing him from the service. For the reasons, which we presently discuss, the Miscellaneous Petition is ordered.

The show cause notice dated 30.10.2002 itself presupposes the punishment of removal from service. To rule out such presupposition in the show cause notice, the

first respondent ought to have considered the representation of the petitioner dated 8.11.2002 and prosecuted OA No. 10133 of 2002 filed by the petitioner assailing the said show cause notice. Instead, the first respondent issued the impugned proceedings in a post haste manner, during pendency of OA No.10133 of 2002.

The contention of the learned counsel for the petitioner that no notice was issued to the petitioner before conducting enquiry also deserves merit, in view of the fact that the testimonials submitted by the petitioner were already verified by the District Educational Officer, Kadapa and based on his report he was given appointment order. There is no material to show that the respondents have either put the petitioner on notice of the alleged enquiry calling upon him to put forth his case or have given him a personal hearing. It appears from the record that the respondents having come to the conclusion to remove the petitioner from service, searched for the reasons and passed the impugned order unilaterally basing on the alleged report of Mandal Parishad Educational Officer dated 24.10.2002.

For the foregoing reasons, we are inclined to allow the writ petition. Consequently, the writ petition is allowed setting aside the impugned order passed by the Tribunal.

Learned Government Pleader for Services – I, appearing for the respondents, contended that disciplinary

action had been initiated against the petitioner on the basis of the complaint lodged by the Opposition Leader and the Enquiry Officer had also gone to the school where the petitioner had studied 7th class and it came to light that the petitioner submitted bogus marks.

This allegation, however, has to be enquired into during the course of a regular enquiry by the Disciplinary Authority. Therefore, having regard to the facts and circumstances, we make it clear that this order does not preclude the respondents from proceeding with any departmental proceedings, which the respondents may contemplate against the petitioner, in accordance with law.

It is needless to add that the petitioner shall not be entitled to any back wages, in the event of his reinstatement. It is also made clear that if any enquiry is contemplated against the petitioner, it is mandatory on the part of the respondents to issue notice to the petitioner and afford reasonable opportunity to put forth his case.

For the foregoing reasons, we are inclined to allow the writ petition. Consequently, the writ petition is allowed setting aside the impugned order passed by the Tribunal. No order as to costs.

T.MEENA KUMARI, J.

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G.CHANDRAIAH, J.

September 3, 2007
MAS